

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

AMERICAN NATIONAL INSURANCE  
COMPANY, et al,  
Plaintiffs,

vs.

JPMORGAN CHASE & CO., et al.  
Defendants

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 3:09-CV-00044

**NOTICE**

Plaintiffs, American National Insurance Company, et al. (“Plaintiffs”), give notice of authority relevant to their Motion for Remand and the FDIC’s Motion to Transfer Venue, both of which are pending before the Court

Specifically, on June 24, 2009, the United States Bankruptcy Court for the District of Delaware, in a case examining the same issues as those before this Court, held that the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 1821(d)(13), is not a jurisdictional bar to “claims to property that is no longer in the hands of the FDIC as receiver, but [is] in the hands of JPMC.” See Excerpt of Transcript of Hearing Before the Honorable Mary F. Walrath, United States Bankruptcy Court Judge, held on June 24, 2009, p. 93, attached to this Notice as Exhibit A.

Judge Walrath found that it was “clear” that:

Firrea only bars claims against a receiver or an institution in receivership. The FDIC argued this same point in the *Henrich* case in the Ninth Circuit, arguing before the Supreme Court that Firrea is not applicable to a suit against a private party assignee of assets from FDIC.

And I’m not prepared to find that the Firrea bar, bars any claims, or any dispute over what assets were transferred. And I just don’t think that, despite the FDIC’s predictions, I don’t think that it is going to cause institutions not to deal with the FDIC.

Exhibit A, p. 93-94.

Judge Walrath issued this ruling in the context of denying the motions filed by two litigants common to the instant lawsuit – JPMorgan Chase Bank, National Association (“JPMC”), and the Federal Deposit Insurance Corporation (“FDIC”) – to stay the adversarial proceedings. *In re: Washington Mutual, Inc. et. al.*, Case No. 08-12229 (Bankr. D. Del. 2008) (Walrath, J.), (*JPMorgan Chase Bank, National Association v. Washington Mutual, Inc. et. al.*, Adv. Proc. No. 09-50551; *Washington Mutual, Inc. et. al. v. JPMorgan Chase Bank, National Association*, Adv. Proc. No. 09-50934). Counsel of record for the FDIC in the instant case, John J. Clarke, Jr., participated in the June 24, 2009 hearing. See Exhibit A, p. 94-96. JPMC and the FDIC have filed notices of appeal and, alternatively, motions for leave to appeal, relating the ruling of Judge Walrath.

The portion of the transcript containing Judge Walrath’s ruling from the bench on June 24, 2009 is attached as Exhibit A. The written orders effectuating the ruling are attached as Exhibits B and C.

Respectfully submitted,

GREER, HERZ & ADAMS, L.L.P.

By: Andrew J. Mytelka with Permission

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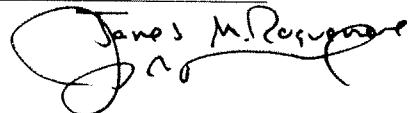
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A handwritten signature in black ink, appearing to read "James M. Roquemore". The signature is written in a cursive, flowing style.

ATTORNEYS FOR PLAINTIFFS

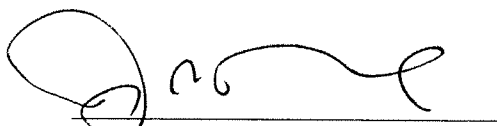
**CERTIFICATE OF SERVICE**

I certify that on July 16, 2009 a copy of the this document was filed with the Court's ECT filing system, which will provide electronic notification of its filing to all counsel who have appeared in this action, including the following counsel of record:

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James M. Roquemore

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF DELAWARE

IN RE:

WASHINGTON MUTUAL, INC.,  
et al.,

Debtors,

Bankruptcy Action  
Case No. 08-12229 (MFW)

Chapter 11

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.  
AND WMI INVESTMENT CORP.,Defendant for all  
claims

and

FEDERAL DEPOSIT INSURANCE  
CORPORATION,Additional Defendant  
for Interpleader  
claim

Adv. Pro. No. 09-50551 (MFW)

WASHINGTON MUTUAL, INC.,  
AND WMI INVESTMENT CORP.,

Plaintiffs,

v.

JPMORGAN CASH BANK,  
NATIONAL ASSOCIATION,

Defendant.

Adv. Proc. No. 09-50934

Wilmington, DE  
June 24, 2009  
10:38 a.m.TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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(Appearances Continued)

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Proceedings recorded by electronic sound recording; transcript  
produced by transcription service.



## Ruling

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1       assertions.

2               I just want to make the observation, which I'm sure  
3       is not lost on Your Honor, that to file a motion to withdraw  
4       the reference at midnight on the night before this hearing, in  
5       a case in which you've been a party for months and months, and  
6       have filed proofs of claims and your own adversary proceeding,  
7       and now to stand up, as they do in their papers and say, Judge,  
8       it wasn't until like a week ago that the scales fell from our  
9       eyes, and we realized that, you know, the issues we asserted as  
10      Chase and the counterclaims that you asserted and the turnover  
11      proceeding, it just struck us that these are all bound up in  
12      Federal law, so let's withdraw the reference.

13              To me, this was the most transparent gamesmanship  
14      that I've seen in a while, and it just reflects, (a) their lack  
15      of conviction in their arguments, and, (b) an inexplicable  
16      desire to run from this Court and to ultimately bind us up in  
17      more, and more, and more delay. Thank you, Judge.

18              THE COURT: Thank you. All right. Well let me issue  
19      my ruling with respect to this. First, I do not find Firrea is  
20      a jurisdictional bar to the debtors' claims to property that is  
21      no longer in the hands of the FDIC as receiver, but are in the  
22      hands of JPMC. I think that's clear from the Third Circuit  
23      law, which is binding on this Court.

24              Hudson made it clear that Firrea only bars claims  
25      against a receiver or an institution in receivership. The FDIC

## Ruling

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1 argued this same point in the Henrich case in the Ninth  
2 Circuit, arguing before the Supreme Court that Firrea is not  
3 applicable to a suit against a private party assignee of assets  
4 from FDIC.

5 And I'm not prepared to find that the Firrea bar,  
6 bars any claims, or any dispute over what assets were  
7 transferred. And I just don't think that, despite the FDIC's  
8 predictions, I don't think that it is going to cause  
9 institutions not to deal with the FDIC.

10 I think the Firrea jurisdictional bar is limited.  
11 And simply is not applicable to the turnover action where the  
12 debtor asserts that it has title to funds in the possession of  
13 JPMC.

14 Similarly, to the extent in the counterclaims in the  
15 JPMC adversary, the debtor is asserting a claim against JPMC to  
16 assets that the debtor claims are property of the estate, for  
17 various reasons, and I won't get into the legal theories, I  
18 think that Firrea does not bar it.

19 With respect to the First Filed Rule, I don't think  
20 it applies in this case, either. The two actions are not  
21 between the same parties dealing with the same claims.

22 The action in the D.C. Court is between the debtor  
23 and the FDIC, and involves claims the debtor has against the  
24 FDIC, which it could not bring here, because they must be  
25 brought in the D.C. Court.

## Ruling

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1           The actions here involve claims against JPMC, which  
2           is not an institution in receivership. And while they may be  
3           similar, or based on the same facts, they are distinct claims  
4           against distinct parties. And, therefore, I'm not inclined,  
5           under the First Filed Rule to defer to the D.C. Court.

6           As much as I might wish to defer to another Court,  
7           unfortunately, I do have exclusive jurisdiction to decide what  
8           is property of the estate. If I determine that the property at  
9           issue is property of the estate, then this Court has exclusive  
10          jurisdiction over that property, and over claims,  
11          counterclaims, other claims against the estate.

12          If I determined it is not property of the estate, I  
13          may, in my discretion, defer to the District Court, or to any  
14          other Court to decide the countervailing claims to that  
15          property. But I think, in the first instance, I have to decide  
16          whether what the debtors are asserting is that they own the  
17          property, or whether the debtors simply assert a claim against  
18          a party.

19          So I'm going to deny the motion to stay the turnover  
20          action and the JPMC actions. I guess we have to then go onto  
21          what's next.

22                 MR. CLARKE: Your Honor --

23                 THE COURT: Yes.

24                 MR. CLARKE: -- my name's John Clarke, I'm Mr.  
25          Califano's partner from DLA Piper, counsel for the FDIC

Colloquy

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1 receiver.

2 THE COURT: Yes.

3 MR. CLARKE: The FDIC receiver believes that Your  
4 Honor's ruling implicates subject matter jurisdiction concerns  
5 and is appealable as of right. But in the alternative, the  
6 FDIC receiver respectfully requests that the Court certify this  
7 ruling for an interlocutory appeal pursuant to 1292(b), because  
8 it involves a controlling question of law as to a substantial  
9 disagreement may exist.

10 And we would like to take an immediate appeal of that  
11 decision to the District Court.

12 THE COURT: Response?

13 MR. CARLINSKY: Your Honor, I would think that if  
14 there is a 1292 motion being brought, it ought to be briefed.  
15 I'm just stating that there is a significant issue as to which  
16 there is disagreement doesn't make it so.

17 And I would respectfully ask that Your Honor setup a  
18 briefing schedule. It may be expedited, and we don't have  
19 objection to that, but let's do it right. And let's do it  
20 right, and let's do it on the papers. And my suggestion would  
21 be, if they want to file the brief, we'll take 5 days to  
22 respond, and then Your Honor could decide that issue, whether  
23 it's going -- whether the Court's going to certify the issue  
24 for immediate appeal.

25 MR. CLARKE: Your Honor, if I might be heard in that

# EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X	
<i>In re:</i>	:
	:
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:
	:
Debtors.	:
	:
-----X	
JPMORGAN CHASE BANK	:
NATIONAL ASSOCIATION,	:
	:
Plaintiff,	:
	:
v.	:
	:
WASHINGTON MUTUAL, INC. AND	:
WMI INVESTMENT CORP.	:
	:
Defendant for all claims	:
	:
-and-	:
	:
FEDERAL DEPOSIT INSURANCE	:
CORPORATION,	:
	:
Additional Defendant	:
for Interpleader claim	:
-----X	

Chapter 11  
Case No. 08-12229 (MFW)  
(Jointly Administered)

Adv. Pro. No. 09-50551 (MFW)

Re: 65 & 25

**ORDER DENYING MOTION OF FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER, TO STAY ADVERSARY PROCEEDING**

Upon the motion, dated June 1, 2009 (the "Motion") [Docket No. 25], of defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank (the "FDIC-Receiver") for an order staying the above-captioned adversary proceeding pending

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

entry of judgment in an action pending in the United States District Court for the District of Columbia, styled Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation, Case 09-cv-00533 (RMC), all as more fully set forth in the Motion and the memorandum of law filed in support of the Motion [Docket No. 26]; and defendant JPMorgan Chase Bank, N.A. ("JPMC") having filed a response in support of the Motion [Docket No. 38]; and the Debtors having filed an opposition to the Motion on June 15, 2009 (the "Opposition") [Docket No. 36]; and a joinder in the Opposition having been filed by the Official Committee of Unsecured Creditors on June 15, 2009 (the "Joinder") [Docket No. 37]; and the Court having jurisdiction to consider the Motion, the Opposition, the Joinder and all related filings in connection with the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 to consider the Motion; and due and proper notice of the Motion, the Opposition, and the Joinder having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motion, the Opposition, the Joinder, and related filings on June 24, 2009 (the "Hearing"); and upon the record of the Hearing and for the reasons set forth on the record of the Hearing, it is hereby

ORDERED that the Motion and the relief requested therein is denied.

Dated: Wilmington, Delaware

July 6, 2009

  
 THE HONORABLE MARY F. WALRATH  
 UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT C



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

<hr/>		X
<i>In re:</i>	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	(Jointly Administered)
Debtors.	:	
<hr/>		X
WASHINGTON MUTUAL, INC. AND	:	
WMI INVESTMENT CORP.,	:	Adv. Pro. No. 09-50934 (MFW)
Plaintiffs,	:	
v.	:	
JPMORGAN CHASE BANK, N.A.,	:	
Defendant.	:	
<hr/>		X

*Re: 31460*

**ORDER DENYING (A) MOTION OF DEFENDANT  
JPMORGAN CHASE BANK, N.A. TO STAY  
AND (B) MOTION OF INTERVENOR-DEFENDANT  
FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER, TO STAY OR DISMISS ADVERSARY PROCEEDING**

Upon (a) the motion, dated June 1, 2009 (the "JPMC Motion") [Docket No. 31], of JPMorgan Chase Bank, National Association ("JPMorgan") for an order staying, in the event it is not dismissed in its entirety, the above-captioned adversary proceeding (the "Adversary Proceeding") commenced by Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors"), and (b) the motion of intervenor-defendant Federal Deposit

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Insurance Corporation, as receiver for Washington Mutual Bank (the "FDIC-Receiver") to stay, or in the alternative, dismiss the Adversary Proceeding [Docket Entry No. 29, Exhibit A] (the "FDIC-R Motion", and together with the JPMC Motion, the "Motions"), all as more fully set forth in the Motions; and the Washington Mutual, Inc. Noteholders Group [Docket No. 38] and the Debtors [Docket No. 39] having each filed an opposition to the Motion on June 15, 2009; and a joinder in the Debtors' opposition having been filed by the Official Committee of Unsecured Creditors on June 15, 2009 [Docket No. 40] (collectively, the "Opposition Papers"); and the Court having jurisdiction to consider the Motions, the Opposition Papers, and all related filings in connection therewith and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having granted by separate Order the motion of the FDIC-Receiver to intervene in the Adversary Proceeding; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 to consider the Motions; and due and proper notice of the Motions and the Opposition Papers having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motions, the Opposition Papers, and related filings on June 24, 2009 (the "Hearing"); and upon the record of the Hearing and for the reasons set forth on the record of the Hearing, it is hereby

ORDERED that the Motions and the relief requested therein are denied in their entirety; and

ORDERED that this Order having resolved all matters for which the intervention of the FDIC-Receiver in this Adversary Proceeding was granted, no further pleading or response shall be required from the FDIC-Receiver in this Adversary Proceeding.

Dated: Wilmington, Delaware

July 16, 2009

  
\_\_\_\_\_  
THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE